

1979 S.C. Op. Atty. Gen. 73 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-55, 1979 WL 29061

Office of the Attorney General

State of South Carolina

Opinion No. 79-55

March 16, 1979

***1 SUBJECT: Property Tax—Value of Property Subject to Execution and Sale.**

Only so much of a defaulting taxpayer's property as is sufficient to satisfy the tax is to be levied upon and sold under execution.

TO: Honorable James T. Funderburk
Mayor
City of Chester

QUESTION:

If there are delinquent taxes on real property that includes 7 acres and 3 building owned by a business which is incorporated, would all of the property be advertised and sold since it is listed on one tax notice, or would just enough be sold to satisfy the tax debt in the same manner as ownership of multiple properties?

APPLICABLE LAW:

[§ 12-49-410 of the 1976 South Carolina Code](#) of Laws.

DISCUSSION:

[Section 12-49-410](#) provides for the issuance of a tax execution and directs in part in the officer charged therewith:

‘* * * levy such execution by distress and sale of so much of the defaulting taxpayer's estate, real or personal, or both, as may be sufficient to satisfy the taxes, State, school, county and special, of such defaulter, * * *.’

It is thus apparent that only so much of the defaulter's property as is necessary to satisfy the tax shall be levied upon and sold. Such comports with the general rule.

‘An excessive levy is void, and so is a sale made thereunder, unless the owner is estopped to complain, or unless the excess is so small that it could not have interfered with payment by the landowner and recovery of the excess under the statute, or led to the sale of any more property than otherwise would have been sold; but, although the value of a house and lot is greater than the amount due on the execution levied thereon, the levy will not be declared excessive unless the lot is capable of subdivision for the purpose of sale.’ [85 C.J.S. Taxation](#), § 788, p. 103.

Exactness in amount is not required, however, and a reasonable effort to sell no more property than necessary to realize the delinquent taxes would properly be acceptable. [Dickson v. Burckmyer](#), 67 S.C. 526, 46 S.E. 346. If the parcel to which you refer is capable of division and a divisible portion would satisfy the tax, only that portion should be sold.

CONCLUSION:

Only so much of a defaulting taxpayer's property as is sufficient to satisfy the tax is to be levied upon and sold under execution.

Joe L. Allen, Jr.
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